

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO  
**HONORABLE A. BRUCE CAMPBELL**

In re:	)
	)
DAVID LEO HARDESTY	) Case No. 05-30108 ABC
JEWELL MARIE HARDESTY	) Chapter 7
	)
Debtors.	)
	)
In re:	)
	)
JEFFREY ALAN TATMAN	) Case No. 05-39415 ABC
SHERYL KAY TATMAN	) Chapter 7
	)
Debtor.	)
	)

**ORDER ON TRUSTEES' MOTIONS FOR AUTHORITY  
TO ENTER INTO LISTING AGREEMENTS  
AND SELL PROPERTY OF THE ESTATE**

Before the Court are two Chapter 7 trustees' motions for authority to enter into listing agreements with a realtor to sell real property of the estate and for simultaneous authority to sell real property in each of the cases captioned above ("Motions"). This Court cannot grant the Motions as prosecuted because they are both deficient in similar respects. The Motions before the Court present an opportunity to convey to the respective Chapter 7 trustees and Chapter 7 trustees in this district, the views of the undersigned judge on such deficiencies so as to permit trustees to obtain orders authorizing sales, if they wish one<sup>1</sup>, without confronting compliance orders.

The first common deficiency is that each trustee seeks simultaneous approval of a listing agreement to sell certain real property and an order approving a sale of the property at an

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<sup>1</sup>Section 363 (b) of the Code authorizes a trustee to use, sell or lease property of the estate other than in the ordinary course of business "after notice and a hearing." Thus, unlike other provisions of the Code which condition the trustee's authority upon the obtaining an order or approval of the court (i.e. 11 U.S.C. § 364 and 11 U.S.C. §365), no order is required as a legal matter for the trustee to sell. As a practical matter, trustees and the purchasers' of property of the estate may want an order of the court and if this Court is called upon to issue such orders, it will endeavor to insure that the rights of all affected are protected as contemplated by the Code and the Rules.

unknown price and to an unknown purchaser, once a contract for sale is negotiated. The trustees also request the authorization to accept a price below that set forth in the listing agreement without further court approval. The fundamental problem with this request is that the creditors and parties in interest in the case would not be notified of the terms and conditions of the sale as mandated by Fed.R.Bankr.P. 6004(a) and 2002(c)(1).

In each case, the real property to be sold has liens against it. If the trustee, in his or her business judgment can reduce the listing price and accept an offer of a purchase price which is equal to or below the liens against it, the mortgagees' rights might be impaired, the estate would receive no benefit from such a sale and the trustee's exercise of the Bankruptcy Code's sale powers could be questioned. In addition, such a sale could compromise a debtor's homestead exemption.

Additionally, as part of the Trustee's Motion in *In re Tatman*, the Trustee seeks authority to subtract from the Debtors' homestead exemption, amounts the Trustee describes as "rent" for the post petition period in which the Debtors resided in the home without paying the monthly mortgage thereby reducing the estate's equity in the property. This Court will not permit such an offset. If the Debtors do not expressly consent to such a reduction in their homestead exemption, the Trustee must pursue the Debtors on such claim. Alternatively, the Trustee could have sought turnover of the property or evicted the Debtors from the property. Accordingly, it is

ORDERED that the Trustee's Motions are GRANTED, in part, and DENIED, in part; and it is

FURTHER ORDERED that the Trustees are authorized in each case to enter into the listing agreements which they have executed to sell real property of the estate; and it is

FURTHER ORDERED that the Trustees' Motions to Sell are DENIED without prejudice to their right to seek approval of a sale once a contract for sale has been achieved; and it is

FURTHER ORDERED that the Motion filed by the Trustee in the *Tatman* case for authority to deduct from the Debtors' homestead exemption amounts due for "rent," is DENIED.

DATED:

BY THE COURT:

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A. Bruce Campbell,  
U.S. Bankruptcy Judge